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SETTING ASIDE VERDICT; INADEQUACY. A good illustrtion of the principle that a court will set aside a verdict on the ground that the damages awarded by a jury are inadequate is found in the case of *Connor* v. *Mayor, Etc., of the City of N. Y.*, 50 N. Y. Suppl. 972 (April 7, 1898).

The facts in the case are as follows: Timothy Connor, deceased, was a workman in good health, driving a cart at $2.00 per day. One day he was thrown from his cart by an accident resulting from a hole in the cross walk of the street two feet square and between five and six inches deep. This unsafe condition had existed for five or six months. Connor received injuries from the fall, from which he died, leaving a widow and four children, the youngest six, and the eldest eleven. The case was submitted to a jury who

found a verdict for the plaintiff for $1000. The trial judge set aside the verdict on the ground that it was inadequate.

The defendant appealed from that order, and the First Department of the Appellate Division of the Supreme Court of New York, by a divided court sustained the decision of the judge below. The majority of the court said that they agreed with the trial judge "that if the defendant was liable at all, the damages sustained by the widow and the four minor children, who will need many years of support before they can care for themselves, exceeded the sum awarded by the jury." They stated also that they were not disposed to interfere with the discretion of the trial court in granting a new trial unless it appeared that that decision was based upon an erroneous determination of a legal question or principle, or upon some misunderstanding of the evidence.

The duty to support the family is upon the husband and father even if the widow and children had other means of support. Under the circumstances they thought that the trial judge did not commit legal error in his determination that the amount awarded by the jury was inadequate.

When there is a grave doubt in the mind of the court whether or not the jury has properly considered the evidence, and the verdict confirms the doubt, a new trial should be granted: *Munley* v. *City of Scranton*, 4 Dist. Rep. 117 (1895).

Where the court sets aside the verdict in a case in which a jury has awarded damages, either excessive or inadequate, it exercises its sound discretion. Instances of the latter occur less frequently because it is less frequently possible to make it appear that the jury grossly erred in awarding too little: Hale on Damages, §§ 92, 93.

The authorities seem to concur on the principle that, when the evidence is indefinite and uncertain in character, it is a case for the consideration of a jury, and one where the determination of a jury should be conclusive; and, on the other hand, the authorities seem to be equally decisive that where the evidence is certain and definite in character, and it is clearly evident that the jury awarded inadequate damages, it is proper to set aside the verdict and direct a new trial.

The case of *Connor* v. *The Mayor, Etc.*, seems to come within the second class, although the decision of the court below was affirmed by a divided court. The dissenting judges holding that the verdict was wrongly set aside, cited *Roger* v. *R. R. Co.*, 37 N. Y. Suppl. 520 (1896), to sustain their position.

An examination of the facts of this case shows that it comes within the first class of cases which the authorities are agreed is peculiarly for the jury. The verdict here was for the death of a three and a-half year old girl. It was held that the verdict should not be set aside, but the evidence was conflicting as to the defendant's negligence, of the intestate's negligence, and that of her parents. The circumstances of the case show that it was a case peculiarly for a jury.

It is laid down in *Roger* v. *R. R. Co.*, which might well be cited to sustain the position taken by the majority, that the court is justified in interfering with a verdict of a jury in those cases where it appears that the jury, in fixing the amount of the verdict, were actuated by prejudice, passion, partiality, or corruption, *or failed to understand and apply the rule of damages appertaining to the case; or where it can be clearly seen from the record that, under all the circumstances of the case, the amount awarded was unreasonable and unfair.*

DISTINCTION BETWEEN "RAILROADS" AND "RAILWAYS;" INTENTION OF THE LEGISLATURE. *Massachusetts Loan & Trust Company et al* v. *Hamilton*, 88 Fed. 588 (May, 1898). In this case the court was called upon to interpret the meaning of the word "railway." The Statute of Montana, under the provisions of which the suit was brought, recited that "a judgment against any railway corporation for any injury to person or property, or for material furnished or labor done upon any of the property of such corporation, shall be a lien within the county where recovered, on the property of such corporation, and such lien shall be prior and superior to the liens of any mortgage or trust deed provided for in this Act." The appellee, the plaintiff below, had obtained a judgment against the Great Falls Street Railway Company for personal injuries received, and claimed that the provision of the statute above quoted made his judgment a lien on the property of the railway company prior and superior to the mortgage liens of the appellants. The court decided that the meaning of the word "railway" was to be gathered from the intention of the legislature when the word was used, and the general legislation on the subject matter. From a review of the Montana Statutes treating of "railroads" and "railways" it appeared that when the Legislature used the words "railroad" or "railway," only "steam railroads" were in contemplation; whereas, when "street railroads" or "street railways" were to be designated the term "street" was prefixed. The court, therefore, held that the statute relied upon by the appellee had no present application, and refused to give priority and superiority to his judgment lien.

This decision accords with the majority of rulings on this subject in the United States. In *Manhattan Trust Co.* v. *Sioux City Cable Railway Co.*, 68 Fed. 82 (1895), it was held that an Iowa Statute making a judgment against any "railway" corporation for injuries to person or property, a lien superior to that of a mortgage on its property, did not include "street railways," for the Legislature when it used the word "railway" meant it to have an exclusive application to "steam railways." In *Louisville and Portland Railroad Company* v. *Louisville City Railway*, 2 Duvall (Ky.), 175 (1865), the court interpreted the word "railroad" not to include "street railways," because such was the apparent intention

of the Legislature. See, also, *Funk* v. *St. Paul City Railway*, 63 N. W. 1101 (1895); *Lax* v. *Forty-second and Grand Streets Ferry Railroad Company*, 46 N. Y. Superior Court, 448 (1880).

Most text-books on railroads, in treating of the distinction between "railroads" and "railways," lay down the rule that the words are synonymous, and that no criterion exists whereby to determine in what sense they are used. It is submitted that this statement is erroneous, and a thorough examination of the very cases cited in support of it establishes the principle that the words are always to be construed in the light of the legislative intent. Thus, in the case of *Hestonville, Mantua and Fairmount Passenger Railway Company* v. *The City of Philadelphia*, 89 Pa. 210 (1879), which is cited as opposing the view adopted in the case of *Massachusetts Loan and Trust Company* v. *Hamilton*, it was held that the term "railroads" included "street railways," because the context of the statute in which it was used demonstrated that such was the intention of the Legislature. In *Washington Street Asylum and Park Railroad Company*, 115 N. Y. 442 (1889), the court decided that "street railways" were embraced in the word "railroad," as used in a statute, it appearing that the Legislature had so intended. See, also, *Johnson* v. *Louisville Railway Company*, 10 Bush (Ky.), 231 (1875).

VERDICT BEFORE JUDGMENT; ASSIGNABILITY; EXECUTION. In the case of *Bennett et al.* v. *Sweet et al.*, 51 N. E. 183 (Aug. 30, 1898), a verdict for personal injuries had been obtained by defendant. Before judgment was entered, plaintiff, a creditor of defendant, brought a creditor's bill to subject this verdict to the payment of his claim. The Supreme Judicial Court of Massachusetts held that the verdict was not property of such a nature as might be reached by the creditor. It is obvious that the question is the same as that presented in cases where the assignability of a verdict is at issue—or, in other words, whether such a verdict is "property." The weight of authority on this question rests with the principal case.

It is generally admitted that a claim for personal injuries, whether before or after verdict, on which judgment has not been entered, is not assignable: *Howard* v. *Crowther*, 8 M. & W. 603 (1843); *Rice* v. *Stone*, 1 Allen, 566 (1861), (assault); *Lawrence* v. *Martin*, 22 Cal. 173 (1863), (malicious prosecution); *Linton* v. *Hurley*, 104 Mass. 353 (1870), (assault); *McGlinchy* v. *Hull*, 58 Me. 152 (1870), (personal injuries). "Has any court of law or equity ever sanctioned a claim by an assignee to compensation for wouuded feelings, injured reputation or bodily pain suffered by an assignor? There are two principal reasons why the assignments above mentioned are held to be invalid at common law. One was to avoid maintenance. This reason has in modern times lost much, but not the whole of its force . . . . The other reason is a

principle of law, applicable to all assignments, that they are void unless the assignor has, actually or potentially, the thing which he attempts to assign. A man cannot grant or charge that which he has not:" *Rice* v. *Stone*, 1 Allen, 566 (1861). Applying this principle, it is clear that a defendant, even after verdict in an action of personal tort, is not in possession of anything, either "actually or potentially," belonging to plaintiff. Such was the result reached in *Thayer* v. *Southwick*, 8 Gray, 229 (1857), where the creditors of the plaintiff attempted to attach a verdict in the hands of the defendant. "The verdict did not convert it [the claim] into a a debt; no action of debt would lie on it. It could not constitute a debt until judgment should be rendered on it." Per Hubbard, J.

The validity of an assignment of a verdict has not, however, been universally denied. In *Langford* v. *Ellis*, 14 East, 202 n. (1806), such an assignment was held good against a subsequent creditor of the assignor, on the ground that "the damages were liquidated at the moment of the verdict." So in *Zogbaum* v. *Parker*, 55 N. Y. 120 (1873), the assignment of a verdict for malicious prosecution was sustained as between counsel and client, even though it was attached by a creditor the moment judgment was obtained. It seems that equity will lend its aid to support assignments in such cases: *Countryman* v. *Bower*, 3 How. Pr. (1848); *Nash* v. *Hamilton*, 3 Abb. Pr. 35 (1856). See, also, *Ladd* v. *Ferguson*, 9 Ore. 180 (1881); *Gamble* v. *R. R.*, 80 Ga. 595 (1888). The objection to such assignment, on the ground that there is no certain sum to assign, has been held not to apply to verdicts or claims for injuries done to property, either real or personal, since the claims are deemed to be in the nature of vested interests. Thus, assignments may be made of claims for trespass *de bonis: North* v. *Turner*, 9 S. & R. 244 (1823), for conversion of personal property; *Jordan* v. *Gillan*, 44 N. H. 424 (1862), for the right to recover a penalty for charging usurious interest; *Gray* v. *Bennett*, 3 Metc. 522 (1842); *Wheelock* v. *Lee*, 64 N. Y. 243 (1876); or for damages suffered from locomotive sparks: *Tyler* v. *Ricamore*, 87 Va. 466 (1891). See 2 Am. & Eng. Enc. of Law (2d ed.), p. 1021.